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10/537,240	05/09/2006	Danny Leonard Adcock		8509

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Jennifer Stephanie Adcock
33 Crystal Street
Petersham, NSW, 2049
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EXAMINER

LEWIN, ALLANA

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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01/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,240	Applicant(s) ADCOCK ET AL.	
	Examiner ALLANA LEWIN	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-53 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 53 is/are allowed.
- 6) ☒ Claim(s) 27-36 is/are rejected.
- 7) ☒ Claim(s) 37-52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 37-52 are objected to because of the following informalities: claim 37 depends from claim 10, which has been cancelled. Claims 38-52 all depend from claim 37 either directly or indirectly, and therefore these claims are also objected to as depending from a cancelled claim. Appropriate correction is required.

As best understood, however, it appears that claim 37 should depend from claim 36, and therefore for purposes of examination the claims have been interpreted as such. However, correction of the dependency of claim 37 is required in order to overcome the above claim objection.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 27-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller.

Miller discloses an exercise device comprising telescopically assembled co-operating inner (18) and outer (16) tubular elements, each having end closure means (28, 38 and 60, respectively) at their outer ends; the outer tubular element (16) including, absent further limitation, an inwardly projecting collar (55), as this member projects inwardly into the outer tubular element, at its inward open end; the inner tubular element provided with, absent further limitation, an outwardly projecting collar provided by a sealing device (53) at its inward open end, as this element projects outwardly in a

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radial manner; the collars co-operating to prevent the withdrawal of the inner tubular element from the outer tubular element with the elements operate telescopically; the device is moveable between a first state in which the telescopic elements are fully extended and a second state in which the telescopic elements are compressible against a bias inside the device provided by spring (50) to provide a resistance force "to rotational movement about the elbow of a forearm in a direction towards an upper arm of the same arm," as the Miller device is fully capable of such a function; wherein, absent further limitation, "the device is of a length which allows engagement of one end with a hand of a user and the other end with an upper part of the same arm such that the user can exercise one arm by urging the hand against the upper arm without use of the other arm," since, as best understood, the size and configuration of the Miller device is fully capable of such a function.

Regarding claim 28, the Miller device is also capable of this recited function.

Regarding claim 29, the bias is a compression spring (50) which naturally biases the telescopic elements to their maximum relative extent.

Regarding claim 30, either directly or indirectly, the ends of the spring act against the closure means to provide the bias to maximum extent.

Regarding claim 31, the maximum extended position is limited by contact between collars, as the collars abut against each other (note Figure 7).

Regarding claim 32, the end closure means of the outer tubular member comprises an end cap (60) having a threaded sleeve section (note Figure 7) which mates with a threaded portion (62) at the end of the tubular element.

Regarding claim 33, the end cap on the tubular element is removable on account of its threaded engagement, thereby allowing access to the interior passage in the device which receives the spring.

Regarding claim 34, the level of force resistance exerted by the device *can be* adjusted by substituting one biasing spring with another of a different compression resistance, since, absent further limitation, the Miller device is fully capable of such a function. Examiner notes that Applicant has not positively recited another biasing spring with a different compression resistance, but merely the capability of substitution of another spring.

Regarding claim 35, the end closure means of the inner tubular member is provided with a threaded portion (internal surface of the socket 38) adapted to mate with a an external thread (19) on the outside of the inner tubular element, the threaded portion providing adjustment means to enable the variation of length between the end closure means on account of the threaded engagement.

Regarding claim 36, the end closure means of the inner tubular member includes a threaded socket (38), the socket adapted for attachment of a resilient support pad (44) via a cup (28) to fit against the shoulder or hand of a user, as it is capable of such a function.

Allowable Subject Matter

Claim 53 is allowed.

Assuming claim 37 is to depend from claim 36, claims 37-52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed November 20, 2008 have been fully considered but they are not persuasive. Miller teaches all of the claimed structural limitations recited, as discussed in detail in the rejection above, with the Miller device being fully capable of performing the recited function, and therefore meets claim 27. Examiner notes that the limitations recited in lines 8-14 of claim 27 are functional language reciting the intended use of the claimed invention. A recitation of the intended use of the claimed invention must result in a *structural difference* between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art (emphasis added). If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALLANA LEWIN whose telephone number is (571)272-5560. The examiner can normally be reached on Monday-Friday, 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. L./

Examiner, Art Unit 3764

January 21, 2009

/LoAn H. Thanh/

Supervisory Patent Examiner, Art Unit 3764